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Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
First session
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Note verbale dated 25 February 2000 from the Permanent Mission of Portugal to the United Nations

The Permanent Mission of Portugal to the United Nations present its compliments to the secretariat of the first session of the Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and, on behalf of the European Union and in pursuit of paragraph 9 of General Assembly resolution 54/54 V of 15 December 1999, has the honour to transmit as documents of the above-mentioned Preparatory Committee, the European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Arms (annex I), and the European Union Code of Conduct (annex II).

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Annex I

European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Arms

The Council of the European Union,

convinced that peace and security are inextricably interlinked with economic development and reconstruction,

recognizing that the availability and accumulation of massive quantities of conventional arms and especially their illicit trafficking, often associated with destabilizing activities, are disturbing and dangerous phenomena, particularly for the internal situation of affected states and for the respect of human rights,

stressing the need for effective national control measures on the transfer of conventional arms,

recognizing also the curbing of illicit trafficking of conventional arms as an important contribution to the relaxation of tension and to reconciliation processes,

desirous to take concrete measures to curb the illicit traffic and use of conventional arms, as called for in UNGA resolution 51/45 F, to take practical disarmament measures, as called for in UNGA resolution 51/45 N, and to provide assistance to states for curbing the illicit traffic in small arms and collecting them, as called for in UNGA resolution 51/45 L, all of 10 December 1996,

recalling the EU Member States' common reply to UNGA resolution 50/70 B of 12 December 1995,

has adopted the following:

European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Arms

1. EU Member States will strengthen their collective efforts to prevent and combat illicit trafficking of arms (*), particularly of small arms, on and through their territories. In particular, they will vigilantly discharge their national responsibility to ensure the effective implementation of obligations resulting from Conventions and Joint Actions adopted in this field. Furthermore, consideration could be given to, inter alia:

   - fostering enhanced cooperation and coordination, whilst respecting national legislation and policies, amongst intelligence, customs and other law enforcement agencies, both at the national and international level, in order to ensure adequate (customs) checks, as well as prompt investigation and effective prosecution in cases of illicit trafficking of arms;

   - improving the exchange of information and data on illicit trafficking of arms, e.g. through the use of international data bases and risk analyses.

2. The EC and its Member States, each within the limits of its respective competence, will take concerted action to assist other countries in preventing and combating illicit trafficking of arms, particularly of small arms. Specifically, this assistance could aim to:

   - set up or strengthen, as appropriate, an adequate body of laws and administrative measures for regulating and monitoring effectively transfers of arms;

   - adopt strict measures, and provide an adequate number of appropriately trained police and customs officials, for the enforcement of national arms export control legislation;

(*) For the purpose of this Programme and in conformity with the definition in paragraph 7 of the Guidelines for International Arms Transfers (UN Disarmament Commission, 7 May 1996), "illicit trafficking in arms" is understood to cover that international trade in conventional arms which is contrary to the laws of states and/or international law.

- set up (sub)regional points of contact to report illicit trafficking of arms;

- set up national commissions against illicit trafficking of arms;

- prevent corruption and bribery in connection with illicit trafficking of arms;

- promote (sub)regional and national cooperation amongst police, customs authorities and intelligence services in this field;

- promote the use of relevant existing international data bases.

3. The EC and its Member States, each within the limits of its respective competence, will take concerted action to assist affected countries, especially in post-conflict situations and in situations where a minimal degree of security and stability exists, in suppressing the illicit circulation and trafficking of arms, particularly of small arms. Specifically, they could aim to:

- ensure the incorporation of appropriate measures for suppressing the illicit circulation and trafficking of arms in peace keeping operations and cease-fire or peace agreements preceding such operations. To this end, they will cooperate closely, where appropriate, with the United Nations;

- set up weapons collection, buy back and destruction programmes;

- set up educational programmes to promote awareness among the local population of the negative consequences of illicit trafficking of arms;

- promote the integration of former combatants in civilian life.

4. EU Member States will ensure adequate cooperation amongst the competent branches of their national authorities in giving concrete form to the objectives of this Programme. The Presidency of the Council will ensure the necessary coordination in this field.

5. The EC, according to its own procedures, and its Member States are prepared, where appropriate, to make funds available in pursuit of the objectives of this Programme.

6. The Council will annually review the actions taken in the framework of this Programme.

Annex II

European Union Code of Conduct on Arms Exports

THE COUNCIL OF THE EUROPEAN UNION,

BUILDING on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992,

RECOGNIZING the special responsibility of arms exporting states,

DETERMINED to set high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers by all Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency,

DETERMINED to prevent the export of equipment which might be used for internal repression or international aggression or contribute to regional instability,

WISHING within the framework of the Common Foreign and Security Policy (CFSP) to reinforce cooperation and to promote convergence in the field of conventional arms exports,

NOTING complementary measures taken against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms,

ACKNOWLEDGING the wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort,

RECOGNIZING that States have a right to transfer the means of self-defence, consistent with the right of self-defence recognized by the UN Charter,

HAS DRAWN UP the following Code of Conduct together with Operative Provisions:

CRITERION ONE

Respect for the international commitments of Member States, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations

An export licence should be refused if approval would be inconsistent with, inter alia:

(a) the international obligations of Member States and their commitments to enforce UN, OSCE and EU arms embargoes;

(b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;

(c) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;

(d) the commitment of Member States not to export any form of anti-personnel landmine.

CRITERION TWO

The respect of human rights in the country of final destination

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

(a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression.

(b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU;

For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with paragraph 1 of the Operative Provisions of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

CRITERION THREE

The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts

Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

CRITERION FOUR

Preservation of regional peace, security and stability

Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.

When considering these risks, Member States will take into account inter alia:

(a) the existence or likelihood of armed conflict between the recipient and another country;

(b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

(c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;

(d) the need not to affect adversely regional stability in any significant way.

CRITERION FIVE

The national security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries

Member States will take into account:

(a) the potential effect of the proposed export on their defence and security interests and those of friends, allies and other Member States, while recognizing that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;

(b) the risk of use of the goods concerned against their forces or those of friends, allies or other Member States;

(c) the risk of reverse engineering or unintended technology transfer.

CRITERION SIX

The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law

Member States will take into account inter alia the record of the buyer country with regard to:

(a) its support or encouragement of terrorism and international organized crime;

(b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;

(c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

CRITERION SEVEN

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

(a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;

(b) the technical capability of the recipient country to use the equipment;

(c) the capability of the recipient country to exert effective export controls;

(d) the risk of the arms being re-exported or diverted to terrorist organizations (anti-terrorist equipment would need particularly careful consideration in this context).

CRITERION EIGHT

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources

Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

OPERATIVE PROVISIONS

1. Each Member State will assess export licence applications for military equipment made to it on a case-by-case basis against the provisions of the Code of Conduct.

2. The Code of Conduct will not infringe on the right of Member States to operate more restrictive national policies.

3. Member States will circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment together with an explanation of why the licence has been refused. The details to be notified are set out in the form of a draft pro-forma set out in the Annex hereto. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it will first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.

The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorize the actual sale or physical export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

4. Member States will keep such denials and consultations confidential and not use them for commercial advantage.

5. Member States will work for the early adoption of a common list of military equipment covered by the Code of Conduct, based on similar national and international lists. Until then, the Code of Conduct will operate on the basis of national control lists incorporating where appropriate elements from relevant international lists.

6. The criteria in the Code of Conduct and the consultation procedure provided for by paragraph 3 of these Operative Provisions will also apply to dual-use goods as specified in Annex 1 to Council Decision 94/942/CFSP ([1]), where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.

7. In order to maximize the efficiency of the Code of Conduct, Member States will work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports.

8. Each Member State will circulate to other Member States in confidence an annual report on its defence exports and on its implementation of the Code of Conduct. These reports will be discussed at an annual meeting held within the framework of the CFSP. The meeting will also review the operation of the Code of Conduct, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.

([1]) OJ L 367, 31.12.1994, p. 8. Decision as last amended by Decision 98/232/CFSP (OJ L 92, 25.3.1998, p. 1).

9. Member States will, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of arms exports from Member States, in the light of the principles and criteria of the Code of Conduct.

10. It is recognized that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria.

11. Member States will use their best endeavours to encourage other arms exporting states to subscribe to the principles of the Code of Conduct.

12. The Code of Conduct and Operative Provisions will replace any previous elaboration of the 1991 and 1992 Common Criteria.

Appendix

Details to be notified

..... [name of Member State] has the honour to inform partners of the following denial under the EU Code of Conduct:

Destination country: .....

Short description of equipment, including quantity and where appropriate, technical specifications: .....

Proposed consignee: .....

Proposed end-user (if different): .....

Reason for refusal: .....

Date of denial: .....